

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

vs.

GALE NORTON, Secretary of  
the Interior, et al.,

Defendants.

Case No. 1:96CV01285  
(Judge Lamberth)

**DEPARTMENT OF THE INTERIOR'S RESPONSE  
TO THE THIRD REPORT OF THE COURT MONITOR**

The problems plaguing management of the Individual Indian Money ("IIM") accounts run deep and have developed over a full century. The Department of the Interior ("Interior") acknowledges that its efforts to reform management of these accounts still face substantial challenges. The Third Report of the Court Monitor focuses on one of the areas facing the largest challenges: BIA Data Clean-up. Interior acknowledges that changes need to be made to improve this subproject in particular and trust reform generally and is in the process of analyzing and developing the appropriate corrections to the program. Mindful, however, of the Court Monitor's warning that it may not set "unreasonable and patently unrealistic milestones that are driven by decisions based on arbitrary dates set to satisfy institutional, political, or litigation goals," Interior is moving carefully to attempt to identify the source and solution to the problems existing in trust reform.

**A. Interior is Making Progress on BIA Data Cleanup Project and Has Taken Steps to Speed up the Process.**

In his Third Report, issued September 17, 2001, the Court Monitor identified significant

management problems relating to the BIA Data Cleanup. Interior has previously attempted to address some of the management problems now identified by the Court Monitor. On July 10, 2001, the Secretary clarified the Special Trustee's role in trust reform. In her Secretarial Order No. 3232 (Exhibit 1), the Secretary expanded the role of the Special Trustee to allow him to issue written directives to change the policy or practice of any agency in Interior if the Special Trustee determines that the policy or practice hinders trust reform, subject to the disapproval of the Secretary. Furthermore, in her memo dated July 10, 2001, the Secretary expressed her "unequivocal commitment to ensuring the progress of effective trust reform and to advance the Departmental responsibility to provide a historical accounting to IIM beneficiaries." (Exhibit 2). In that memo, the Secretary also clarified "that the Special Trustee is in charge of trust reform." (Exhibit 2). These directives were intended to provide the Special Trustee with the necessary authority to perform his functions.

Interior is approaching the findings of the Court Monitor in the Third Report with the gravity they deserve and intends to find a way to fix the problems identified, including those associated with the authority of the Special Trustee. In light of the Court Monitor's recent report, Interior advises that it is reassessing the situation to determine what additional actions or directives may be required to clarify that the Special Trustee has the requisite authority to perform his duties effectively. If the Secretary and the Special Trustee believe that further authority is required under the Secretarial Order, Interior will work to expeditiously provide all appropriate authority.

In order to effectively implement the authority given him under the Secretarial Order, the Special Trustee has appointed Donna Erwin as the Deputy Special Trustee for Trust Systems and

Projects within the Office of Special Trustee. Since July 2001, Ms. Erwin has been focusing on addressing the challenges facing trust reform, focusing first on TAAMS and the BIA Data Cleanup subprojects. In performing her work, Ms. Erwin has been working closely with Electronic Data Systems to provide an independent analysis of the status of trust reform in general and TAAMS and BIA Data Cleanup in particular. Electronic Data Systems is expected to submit its final report by mid-January 2002. Interior will share this report with the Court Monitor when it is submitted, and in order to make Electronic Data Systems' analysis as useful as possible, Electronic Data Systems has been provided with a copy of the Third Report of the Court Monitor for its review and use. Based upon the Electronic Data Systems report and any recommendations that flow from Ms. Erwin, Interior anticipates making further changes to the structure and management of trust reform.

**B. Interior Has Taken Steps to Improve Coordination Between Subproject Managers.**

In the meantime, however, the Special Trustee has scheduled a meeting of individuals and managers involved in trust reform. In addition to all the subproject managers and representatives of the contractors, Interior anticipates that the meeting will be attended by the Special Trustee, the Assistant Secretary for Indian Affairs, and the Associate Deputy Secretary. This conference will be held on October 2-3, 2001. The purpose of the meeting is to clarify where Trust Reform subprojects are interdependent; to improve intragency cooperation on trust reform across the Department, particularly in areas where interdependencies are identified; to improve project management capabilities; and to improve the Quarterly Reports submitted to this Court.

### **C. Interior Is Taking Steps to Improve the Quarterly Reports.**

In response to concerns raised by the Court Monitor and the Special Trustee relating to the accuracy of Interior's Quarterly Reports,<sup>1/</sup> the Department is developing a process that requires greater coordination between the subproject managers and the individuals responsible for compiling and transmitting the Seventh Quarterly Report. This process, which Interior anticipates will involve more direct inquiry of the staff who are involved in day-to-day trust reform activities for the purpose of verifying their progress reports, is an initial step toward improving the Quarterly Reports. Interior will report further to the Court regarding this process on October 3, 2001.

Additionally, as reported in Interior's Response to the Court Monitor's Second Report, the Department, to date, has referred all allegations of past misconduct with regard to the forthrightness of information provided to this Court to the Inspector General and requested the Inspector General conduct a thorough investigation. To assist the Inspector General in his response to the reference already made to him, Interior forwarded the Third Report of the Court Monitor to the Inspector General on September 28, 2001.

### **D. Conclusion**

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<sup>1/</sup>In light of the numerous factual disputes among the witnesses, and in order to ensure appropriate process is provided to all involved individuals, Interior does not at this time undertake to rebut or discuss the individual factual findings of the Court Monitor. By not addressing each witness statement and factual statement, Interior does not waive for itself or any individual employee or counsel the right to challenge the factual assertions contained in the Third Report of the Court Monitor after any investigation by the Inspector General has been completed or should further proceedings arise. See Order of Reference at 2, ¶ 5 (providing that "[i]n any proceeding before this Court, . . . findings of fact [contained in the Report] shall be reviewed de novo.").

Interior acknowledges that BIA Data Cleanup is an important component of trust reform.

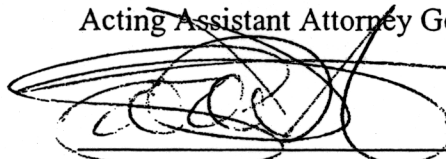
The Department has taken positive steps to improve the management and oversight of the BIA Data Cleanup process by delegating broad authority to the Office of the Special Trustee on July 10, 2001. Interior is committed to fulfilling its trust obligations to the American Indians by enacting trust reform as quickly as possible and will continue to work with the Court Monitor to explore all options to improve the process.

Dated: October 1, 2001

Respectfully submitted,

JOHN C. CRUDEN

Acting Assistant Attorney General

A handwritten signature in dark ink, appearing to read 'S. Himmelhoch', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on October 1, 2001, a copy of the foregoing

**DEPARTMENT OF THE INTERIOR'S RESPONSE TO THE THIRD REPORT OF THE**

**COURT MONITOR** was served on Plaintiffs by placing a copy in the United States mail,

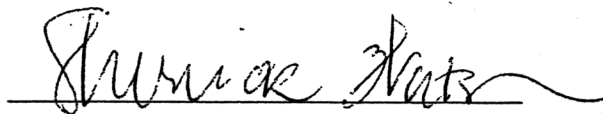
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A handwritten signature in cursive script, appearing to read "Thaddeus Holt", written over a horizontal line.